



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.10.2021

Pronounced on : 01.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.27228 of 2018

and

Crl.M.P.No. 15701 of 2018

1.Shanmuga Sundari
2.Kalyanasundari
3.Balasubramanian

.. Petitioners/Accused 1 to 3

Vs.

1.State rep.by the Sub Inspector of Police,
Chidambaram Town PS,
Cuddalore District.
(Cr.No.233 of 2018)

2.Vaithiyanathan

.. Respondent/Complainant/
Defacto Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records of the impugned proceedings in C.C.No.218 of 2018 on the file of the learned Judicial Magistrate No.II, Chidambaram.

For Petitioner : Ms.T.R.Thara

For RR1 : Mr.C.E.Pratap
Government Advocate (Crl.Side)

For RR2 : No appearance

O R D E R

This petition has been filed to call for the records of the impugned proceedings in C.C.No.218 of 2018 on the file of the learned Judicial Magistrate No.II, Chidambaram.

2. The case of the prosecution is that the 2nd respondent / defacto complainant married one Revathy in the year 2004. The 1st petitioner is the Sister and the 2nd petitioner is the mother of the 2nd respondent and the 3rd petitioner is the husband of the 1st petitioner. The allegation against these petitioners is that they are demanding 100 sovereigns and Rupees 5 lakhs from the 2nd



respondent's wife and using filthy language against her and threatened her with dire consequences if she fails to bring the demand. Against the illegal act of the petitioners, the 2nd respondent has filed a complaint before the law enforcing agency for the offence under Sections 294 (b), 506 (1) and 498(A) IPC and the same culminated into a charge sheet in C.C.No.218 of 2018, on the file of the learned Judicial Magistrate No.II, Chidambaram. Challenging the same, the present petition is filed.

3. The learned counsel appearing for the petitioners submitted that the 1st petitioner is residing along with her husband/3rd petitioner and their children to take care of her old age parents. The 2nd petitioner's husband had properties in Nankoor Village, Nagapattinam District and the same was bequeathed in favour of the 2nd respondent and he is enjoying the income arising from out of the said properties. The 2nd respondent entered into the 2nd petitioner's house as an occupant and threatened the 2nd petitioner to transfer the property in his name. Since the same was refused by her, she was attacked by the 2nd respondent and when it was questioned by the 3rd petitioner, he was also attacked by the 2nd respondent, his wife and their relatives. Hence, the 3rd petitioner has lodged complaint before the 1st respondent Police in Cr.No.250 of 2017, whereby, the 2nd respondent was remanded to judicial custody and later released on bail and the said case is pending before the Court of Judicial Magistrate No.II, Chidambaram in S.T.C.No.172/2017 for adjudication.

4. It is further alleged by the learned counsel appearing for the petitioners that the 2nd respondent has received a sum of Rs.19 lakhs from the petitioners and for settling the same, issued a cheque. However the said cheque was returned with an endorsement funds insufficient. Hence, the 3rd petitioner has initiated criminal proceedings in S.T.C.No.126 of 2017 under Section 138 of the Negotiable Instruments Act and the same is also pending before the Judicial Magistrate II, Chidambaram. While such being the case, the 2nd respondent has lodged false complaint dated 24.04.2017 before the 1st respondent stating that after a passage of 14 years of marriage between the 2nd respondent and his wife, these petitioners demanded dowry from the 2nd respondent's wife. The 2nd respondent has filed CrI.M.P.No.2330 of 2017 before the learned Judicial Magistrate II, Chidambaram, to register the complaint, wherein a direction was issued to the 1st respondent Police to investigate the matter and submit a report. In view of the time bound order of the Trial Court, the 1st respondent Police, without conducting any proper investigation, has filed a final report before the Trial Court and the same was taken on file in C.C.No.218 of 2018. Hence prays for quashment of the criminal proceedings pending before the Trial Court.



5. The learned Government Advocate (Crl.Side) submitted that the grounds raised by the counsel for the petitioners are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is submitted that all the grounds may be left open to the petitioners to be agitated at the time of trial and the same could be considered on its own merits and in accordance with law at the time of trial.

6. Though notice has been issued on the 2nd respondent, however, when the case is taken up, there is no representation on behalf of the 2nd respondent. The case pertains to the year 2018 and the same has been running in the list for quite sometime. In such view of the matter, considering the pendency of the matter and the fact that the 2nd respondent has not appeared either in person or through counsel, this Court is inclined to proceed with the matter on the materials available before it.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. Though offences u/s 294 (b) and 506 (i) IPC have been raised against the petitioners, however, the main offence that is alleged against the petitioners is Section 498A IPC and for better appreciation, the same is extracted hereunder :

''498A. Husband or relative of husband of a woman subjecting her to cruelty - whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.''

9. Even a bare perusal of the provisions makes it clear that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished as contemplated under the Act. The cruelty that is meted out to the woman should be made as a complaint by a woman, who is subjected to such cruelty and it cannot be by any other person acting on her behalf, be it her husband or any of his relative.

10. In the case on hand, the complaint has been made by the 2nd respondent, who is admittedly the son of the 2nd petitioner and the allegation being made against the petitioners is that cruelty in the form of dowry harassment has been meted to his wife. However, there is no whisper from the wife about any such act by the petitioners. Nor there is any materials placed before this Court from the wife to show that such harassment has been meted out to her by the petitioners. The husband, on his



own volition, cannot file any case stating that his wife is being subjected to harassment without the aggrieved party making such an allegation. If this Court allows the 2nd respondent to continue with the present complaint, it would be nothing but travesty of justice and would be against the spirit of Section 498A. The ingredients of the offence u/s 498-A has not been fulfilled and the law enforcing agency, without understanding the legal provisions has erroneously registered FIR and the court below also has entertained the said charge sheet without applying its mind as to whether the offence u/s 498-A IPC could be maintained.

11. Further with regard to the allegations u/s 294(b) and 506(i) IPC are concerned, in order to wreck vengeance against the petitioners, who gave earlier complaint in Cr.No.250/2017 against the 2nd respondent and his wife, the 2nd respondent has filed the false complaint which is borne out by record that two cases, one u/s 138 of the Negotiable Instruments Act and another case relating to attack made by the 2nd respondent on the petitioners have already been filed and only as a counter blast the present complaint has been made against the petitioners. This clearly shows that it is an afterthought on the part of the 2nd respondent to implicate the petitioners in the offence.

12. For the reasons aforesaid, this Criminal Original Petition is allowed and C.C.No.218 of 2018 on the file of the learned Judicial Magistrate No.II, Chidambaram is quashed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.II,
Chidambaram.
2. do Through The Chief Judicial Magistrate,
Cuddalore.
- 3.The Sub Inspector of Police,
Chidambaram Town PS,
Cuddalore District.



4.The Public Prosecutor,
High Court of Madras, Chennai 600 104.

+1cc to Ms.T.R.Thara, Advocate SR.No.56807

Cr1.O.P.No.27228 of 2018

KSM(CO)
GMY (26/11/2021)